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16

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/480,260 01/11/00 HAMET

F 1171-99

HM22/0130

EXAMINER

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MELLER, M

ART UNIT

PAPER NUMBER

1651

DATE MAILED:

01/30/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/480,260

Applicant(s)

HAMET ET AL.

Examiner

Michael V. Meller

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claims ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. & 119(e).

Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 18) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 19) ☐ Notice of Informal Patent Application (PTO-152) ^
- 20) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 is confusing since the first group for a disorder to be selected from is not presented as a proper markush group, whereas later in the claim, a proper markush group is presented for the stressor. Correction is required.

Further, claim 7 is confusing since it depends from claim 5 which defines the stressor as an oxidative environment. Claim 7 is defining the stressor as ultraviolet light, thus, confusing the claim and not further limiting claim 5.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Claims 1-10, 17 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Bolton (US 5,591,457).

Bolton teaches the claimed method for a physical trauma disorder, namely, miscarriage and organ rejection, see entire reference, especially, col. 4, lines 19-30, col. 7, lines 28-62 and the claims.

Claims 1-10 and 15 are rejected under 35 U.S.C. 102(e) as being anticipated by Bolton (US 5,834,030).

Bolton teaches the claimed method for a neurological disorder, see entire reference, especially, col. 2, lines 24-31, col. 3, lines 44-end- col. 4, lines 1-19, claims 1-12.

Claims 1-10, 17, and 18 are rejected under 35 U.S.C. 102(e) as being anticipated by Tremblay et al.

The reference teaches the claimed method for a physical disorder, i.e. ischemic stress encountered following subsequent surgery, see entire reference, especially col. 2, lines 57-65, col. 3, lines 65-end and col. 4, lines 1-3 and lines 48-end, col. 5, lines 1-13, example 1, all of the claims.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bolton (US 5,834,030) taken in combination with Bolton (US 5,591,457) and Tremblay et al.

The references are combined together to teach the claimed method. The references each teach either neurological or physical trauma disorders but the references also teach about immune system disorders and that the method is used to counteract the adverse effects of stress in a mammalian patient.

Since radiation exposure, chemical exposure and ingestion disorders are all related in that they effect the immune system in a negative way, thus creating an immune system disorder, that is, treating of any disease that is associated with a reduced activity of the immune system, or which may be benefitted by increasing the activity of the immune system (see Bolton '457-col. 7, lines 27-63), then it would have been obvious to one of ordinary skill in the art to use the disclosed methods of the above references on radiation exposure, chemical exposure and/or ingestion disorders.

Further, as taught by Tremblay (see col. 2, lines 56-65), it is known that to counteract the adverse effects of stress and/or precondition a patient for improved

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stress and/or to precondition the patient for improved resistance and reaction to subsequently encounter stress, one of ordinary skill in the art would use the disclosed method. Since, radiation exposure, chemical exposure and ingestion disorders are known to cause stress on the body, then it would have been obvious to one of ordinary skill in the art to use the disclosed method which is taught to be used on neurological or physical disorders also on radiation exposure, chemical exposure and ingestion disorders since stress is what the mammalian body undergoes when radiation exposure, chemical exposure and ingestion disorders occur.

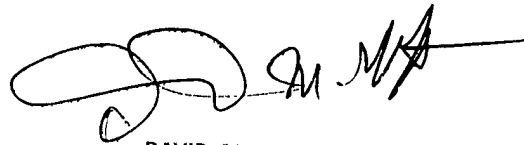
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael V. Meller whose telephone number is 703-308-4230. The examiner can normally be reached on Monday thru Friday: 10:30am-7:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Wityshyn can be reached on 703-308-4743. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-0294 for regular communications and 703-308-0294 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0196.

MVM
January 18, 2001

A handwritten signature in black ink, appearing to read 'DM Naff', with a large, stylized initial 'D' and a horizontal line extending to the right.

DAVID M. NAFF
PRIMARY EXAMINER
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